IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 540 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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AVINASH SHOBHASING

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 540 of 1997

MR G RAMAKRISHNAN for Petitioner No. 1

MR BY MANKAD, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 24/07/2001

ORAL JUDGEMENT

The appellant accused is from State of Uttar Pradesh. It is the prosecution case against the appellant that with the intention to loot, he entered N.T.P.C. Adityanagar Post Office on 27.4.1995 at 4.00 PM

with a Tamancha and pointing that Tamancha at the complainant Bhagubhai Devabhai Patel and other employees of the Post Office, threatened them to hand over whatever cash lying there in the Post Office. However, the complainant raised shout and the accused was over-powered and caught red-handed there and then and handed over to the Police. Accordingly, he was charged for the offences under Sections 393, 398, 506(2) IPC and Section 25A of Arms Act. Charge at Ex.8 was framed against the appellant accused by the learned Additional Sessions Judge, Surat on 18.1.1996. To prove its case, the prosecution examined complainant and other witnesses before the trial Court. At the end of trial, after recording the evidence of the accused under Section 313, the appellant accused was found guilty for the offences under Section 398 read with Section 393 IPC. Accordingly, the appellant accused was sentenced to suffer seven years rigorous imprisonment for the offence under Section 398 IPC. However, no separate order of sentence was passed for the offence under Section 506(2) IPC. He was given set-off for the period during which he remained as under-trial prisoner. Muddamal article Desi Tamancha with two cartridges were forfeited to the State.

The appellant has challenged the aforesaid order of conviction and sentence passed by the learned trial Judge, by way of the present appeal through jail. The same was admitted on 23.9.1997 and on 19.6.1998, another learned Judge of this Court directed the office to get prepared the paper book from the lower court expeditiously and as soon as the paper book is received alongwith R&P, it was ordered to be listed for final hearing. This matter was accordingly listed on the running Board of Final Hearing of 12th July, 2001 at serial No.6. When the matter was called out, no one was present for the appellant accused. It appears that Shri G. Ramakrishnan was appointed to defend the case of the appellant accused in this appeal as amicus-curiae, but unfortunately he is not present.

Having regard to the fact that the appellant accused was in jail since 17.4.1995 and he was sentenced to suffer 7 years RI which is going to be over soon, in absence of the learned Counsel for the appellant accused, this appeal is decided with the aid and assistance of learned APP Shri Mankad.

Having carefully gone through the evidence of the complainant and other witnesses who were very much present in the Post Office at the time of incident, it cannot be said that they have falsely involved the

appellant accused. In fact, on raising shouts the other persons came there and the appellant accused, who was armed with Desi Tamancha was overpowered by them. From his possession two chits were found written in Hindi

(TO BE COPIED FROM ORIGINAL JUDGEMENT)

Below that it was written " ".

This has been proved by the prosecution in the evidence of the prosecution witnesses. It was urged before the trial Court that the prosecution witnesses were not knowing the name of the accused, still his name was mentioned in the complaint and therefore the prosecution case should not be believed. However, it was explained in the evidence of the prosecution witnesses that after over-powering the accused, they asked his name and at that time he gave his name. Thus, the name of the appellant accused was mentioned in the FIR. In such type of cases when there are minor discrepancies in the evidence of the prosecution witnesses, then such minor discrepancies cannot help the accused particularly when the evidence of the complainant and other witnesses who were present at the time of incident is found otherwise reliable.

In the instant case, there was no question of sending Desi Tamancha to FSL because before the accused can make use of it, he was over-powered by the complainant and others.

Having carefully gone through the reasons assigned by the learned Judge for convicting accused, it cannot be said that the learned Judge has committed any error while convicting the accused, which calls for interference by this Court. This brings me to the point of sentence. Before the trial Court it was submitted that he was poor and he had to maintain his old parents and he was the only earning member of his family. These are no grounds for imposing lesser sentence. The accused was only 19 years at the time of the offence. He came from another State for commiting the crime. In our country lakhs of people are living below the poverty line, but they do not indulge in these type of activities of loot and robbery. It is true that in this case, the appellant accused had not fired from his Tamancha, nor he was able to loot a paise, but that could not be a ground for imposing lesser sentence. In such type of cases where the trial Court has exercised its discretion and imposed seven years RI, then this Court cannot interfere

with such order of sentence only on the ground that the appellant accused was poor.

In view of the above discussion, this appeal fails and is hereby dismissed.

(B.J.Shethna, J.)

*/Mohandas